

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

FILED

AM. July 15 2008
DAVID J. MALAND, CLERK
U.S. DISTRICT COURT

DEEP NINES, INC.,

By Oppenreit
DEPUTY

Plaintiff,

Civil Action No. 9:06-CV-174

MCAFEE, INC.,

Defendant.

JUDGE RON CLARK

JURY VERDICT FORM

Question No. 1 (Direct Infringement)

Do you find by a preponderance of the evidence that McAfee, Inc. has directly infringed either of the following claims of the '976 patent? Answer "YES" or "NO" as to each claim. If you answer "YES" for literal infringement on either claim do not answer the question under the doctrine of equivalents for that same claim.

Literal Infringement

Claim 6 _____

Infringement Under the Doctrine of Equivalents

Claim 6 Yes

Claim 12 _____

Claim 12 Yes

Please go on to Question 2.

Question No. 2 (Indirect Infringement - Induced)

Do you find by a preponderance of the evidence that McAfee, Inc. has induced another company or person to infringe either of the following claims of the '976 patent? Answer "YES" or "NO" as to each claim. If you answer "YES" for literal infringement on either claim do not answer the question under the doctrine of equivalents for that same claim.

Inducement of Literal Infringement	Inducement of Infringement Under the Doctrine of Equivalents
Claim 6 _____	Claim 6 <u>Yes</u>
Claim 12 _____	Claim 12 <u>Yes</u>

Please Go on to Question 3.

Question No. 3 (Indirect Infringement - Contributory)

Do you find by a preponderance of the evidence that McAfee, Inc. has contributed to the infringement of either of the following claims of the '976 patent by another company or person? Answer "YES" or "NO" as to each claim: If you answer "YES" for literal infringement on either claim do not answer the question under the doctrine of equivalents for that same claim.

Contributed to Literal Infringement	Contributed to Infringement Under the Doctrine of Equivalents
Claim 6 _____	Claim 6 <u>Yes</u>
Claim 12 _____	Claim 12 <u>Yes</u>

If you have answered "No" to all claims in Question Nos. 1, 2, and 3, do not answer Questions 4 and 5. Instead, go on to Question 6(a). If you have answered "Yes" to any claim in Question Nos. 1, 2, or 3, then answer Question Nos. 4 and 5, then go on to Question No. 6(a).

Question No. 4 (Damages)

What sum of money, if any, do you find is adequate to compensate Deep Nines, Inc. for the conduct you found to infringe from the commencement of infringement through today? State your answer in either format **(A) OR** format **(B)** (but not both) in dollars and cents:

(A) A reasonable royalty from the commencement of infringement through today:

\$ _____

OR

(B) A reasonable one-time lump sum royalty to cover all past and future damages of:

\$ 18,000,000.

Please go on to Question No.5

Question No. 5 (Willfulness)

Do you find by clear and convincing evidence that such infringement by McAfee, Inc. was wilful? Answer "YES" or "NO":

Answer: Yes

Please go on to Question No. 6(a).

Question No.6(a) (False Marking)

Do you find by a preponderance of the evidence that McAfee has engaged in false marking? Answer "YES" or "NO":

Answer:

Yes

If you answered "Yes" to Question No. 6(a), go on to Question No .6(b). If you answered "No" to Question No. 6(a), please date and initial the verdict form.

Question No. 6(b)

State how many times you find from a preponderance of the evidence that an instance of false marking occurred.

Answer:

14

Please date and initial the verdict form.

DATE 7 | 15 | 08

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